IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. NOs : 677 & 8011 of 2005

W.P. NO. 677 of 2005

Between:

Aided Arabic High School Uravakonda, Ananthapur District.

..... PETITIONER

AND

The Government of Andhra Pradesh, represented by its Secretary, Education Department and 2 others.

.....RESPONDENTS

W.P. NO. 8011 of 2005:

Muslim Educational Society, Uravakonda, Ananthapur District.

PETITIONER.

AND

The Government of Andhra Pradesh, represented by its Secretary, Education Department and 3 others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.Nos. 677 & 8011 of 2005

COMMON ORDER:

These writ petitioners raise common questions of fact and law and accordingly they are dealt with by a common order.

The present two writ petitions are filed, one by the President, Muslim Educational Society, Uravakonda and another by the correspondent of the Aided Arabic High School, Uravakonda, respectively, challenging the G.O.Rt.No.659, Education (SE.C.S.1) Department, dated 30.07.2004. In view of the impugned proceedings, the period of suspension and termination of N. Rasool Sahib, Head Master, Aided Arabic High School, Uravakonda was regularized.

Before adverting to the question as to whether the impugned Order issued by the 1st respondent suffers from any legal infirmity requiring any interference as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of these writ petitions:

The Aided Arabic High School, Uravakonda is a Muslim Educational Association started in the year 1962. Latter on the school was used to run with the grant-in-aid given by the Government of Andhra Pradesh. The 3rd respondent herein was appointed as a School Assistant and prior to his retirement he was working as in-charge Head Master as he was alleged to have been committed several irregularities and so he was placed under suspension pending enquiry proceedings dated 25.9.2000. Thereafter, the 3rd respondent herein filed W.P.No.23012 of 2000, wherein this Court directed the respondents therein for reinstatement and payment of salaries. Accordingly, the 3rd respondent was reinstated into service by the management on 3.4.2001. Latter, the said writ petition was dismissed. Again, the management suspended the 3rd respondent on 11.6.2001, after enquiry he was terminated from service on 2.8.2001. Thereafter, against the said termination order the 3rd respondent preferred the appeal before the 2nd respondent, the District

Educational Officer (D.E.O) who had directed reinstatement of the 3rd respondent pending finalization of the departmental enquiry as per the orders of D.E.O., the 3rd respondent was reinstated into service on 26.3.2003. Thereupon the 4th respondent, the correspondent of the School had issued proceedings in Rc.No.9/2003, dated 30.4.2003 dropping the disciplinary proceedings issued against the 3rd respondent. The said action according to the management is without the authority of the law. According to the correspondent, the signatures of the correspondent were forged by the 3rd respondent and send the proposals to the respondents 1 and 2. Then, the Managing Committee passed resolution on 17.3.2005 dropping the proceedings dated 30.4.2003. The Executive Committee also asked explanation from the 4th respondent with regard to proceedings in Rc.No.9/2003 dated 30.4.2003. The 4th respondent on 13.4.2003 gave explanation stating that he did not issue such proceedings and the said proceedings might have been forged or might have taken signatures for some other purpose and used the same for the purpose of creating such proceedings. When the appeal filed by the 3rd respondent with the 2nd respondent is pending, he ought not to have dropped the disciplinary proceedings. The 2nd respondent on 30.6.2003 had sent proposals to commissioner and Director of School Education seeking orders for regulating the period of suspension and termination from service. Then the Government issued the impugned Order.

The District Educational Officer (D.E.O) being the 2nd respondent and also on behalf of the 1st respondent filed counter-affidavit denying the allegations made in the writ petition. In the counter affidavit, it is specifically stated that the 4th respondent G.B.Zeelan issued reinstatement orders in favour of the 3rd respondent and again the correspondent submitted proposals for regularization of suspension and termination period as on duty basing on the General Body and Management Body resolutions. As a matter of fact, the D.E.O., in his proceedings submitted to the Commissioner and Director of the School Education, dated 30.6.2003, a mention was made that the General Body of Muslim Education Association was held meeting on 24.3.2003 and resolved to drop all the charges framed against Sri N. Rasool Sahib, Head Master, by the previous committee and empowered the Correspondent Sri D.B.Zeelan to issue orders accordingly, the correspondent issued orders

dropping all the charges against N.Rasool Sahib. In the first instance, the correspondent Mr. D.B.Zeelan issued the proceedings dated 26.3.2003. The said order was passed for reinstatement of the 3rd respondent and on 2.5.2003 he addressed a letter to the D.E.O requesting for grant of permission for the payment of pay and allowances to the Head Master. On 30.9.2003 the D.E.O, addressed a letter to the petitioner calling for the leave particulars and Service Register of Sri N.Rasool Sab for which the petitioner replied that the particulars were already submitted. On scrutiny of the entire correspondence, 1st respondent, Government issued the impugned order. Hence, prayed that the writ petition is liable to be dismissed.

Sri Kasa Jaganmohan Reddy and Sri T.Durga Reddy, the learned counsel appearing for the petitioners in both the writ petitions respectively would submit that the disciplinary proceedings initiated against R.3 by name N.Rasool Sahib (in both the writs) as ordained finality and when the appeal is pending before the District Educational Officer, the Government is not competent to pass any orders with regard to the treating the period of termination till the re-instatement. The correspondent has not without lawful authority sent the proposal seeking permission for payment of pay and allowances to the in-charge Head Master, but the impugned order is liable to be set-aside on the ground that it was passed on a total non-application of mind and the F.R.54-A(1) has no application and therefore, it is liable to be set aside.

On the other hand, the learned Government Pleader for School Education on behalf of the respondents 1 and 2 contended that the Government as the revision authority can review any disciplinary proceedings and that quoting wrong provision is not a ground for setting aside the impugned order that the managing committee has passed resolution to drop the further proceedings against the Ex. Head Master. In pursuance of the resolution passed by the general body, all the proceedings against N. Rasool Sahib, Head Master has been withdrawn and in pursuance of the general body decision the correspondent issued the proceedings. Therefore, the order under challenge does not suffer from any legal infirmity so as to call for interference of this Court.

The two writ petitions are filed, one by the President, Muslim Educational

Society, Uravakonda and another by the correspondent of the Aided Arabic High School, Uravakonda, respectively, challenging the G.O.Rt.No.659, Education (SE.C.S.1) Department, dated 30.07.2004. As per the impugned proceedings, the suspension and termination period of N. Rasool Sahib, Head Master, Aided Arabic High School, Uravakonda was regularized as follows:

> "From 25.9.2000 to 2.4.2001: treating the period of suspension on duty. From 11.6.2001 to 1.8.2001: Treating the period of suspension as on duty. From 2.8.2001 to 26.3.2003: Treating the period of terminsation of service as on duty."

The Aided Arabic High School, Uravakonda is a Muslim Educational Association, started in the year 1962. Latter the school was running with the grant-in-aid provided by the Government of Andhra Pradesh. The 3rd respondent herein was appointed as a School Assistant and prior to his retirement he was working as in-charge Head Master as he was alleged have committed certain irregularities, he was placed under suspension pending enquiry proceedings dated 25.9.2000. Thereupon, the 3rd respondent herein filed W.P.No.23012 of 2000, wherein this Court directed the respondents therein for reinstatement and payment of salaries. Accordingly, the 3rd respondent was reinstated into service by the management on 3.4.2001. Latter, the said writ petition was dismissed. Again, the management suspended the 3rd respondent on 11.6.2001, after enquiry he was terminated from service on 2.8.2001. Against the said termination order the 3rd respondent preferred appeal before the 2nd respondent, the District Educational Officer directed reinstatement of the 3rd respondent pending finalization of the departmental enquiry as per orders of the D.E.O., the 3rd respondent was reinstated into service on 26.3.2003. Thereupon the 4th respondent, the correspondent of the School issued proceedings dated 30.4.2003 dropping the disciplinary proceedings issued against the 3rd respondent. The said action according to the management is without the authority of the law and according to the correspondent, the signatures of the correspondent were forged by the 3rd respondent and send the proposals to the respondents 1 and 2. Thereupon, the Managing Committee passed resolution on 17.3.2005 dropping the proceedings dated 30.4.2003. The Executive Committee also asked explanation from the 4th respondent. The 4th respondent gave explanation stating that he did not issue such

proceedings. The District Educational Officer in the counter affidavit, it is specifically stated that the 4th respondent G.B.Zeelan had issued the orders for reinstatement of the 3rd respondent and again the correspondent submitted proposals for regularization of suspension and termination period as on duty basing on the General Body and Management Body resolutions.

As a matter of fact, the D.E.O., in his proceedings submitted to the Commissioner and Director of the School Education, dated 30.6.2003, a mention was made that the General Body of the Muslim Education Association was held meeting on 24.3.2003 and resolved to drop all the charges framed against Mr.N. Rasool Sahib, Head Master, by the previous committee and empowered the Correspondent Sri D.B.Zeelan to issue orders accordingly, the correspondent issued orders dropping all the charges against N.Rasool Sahib. In the first instance, the correspondent Mr. D.B.Zeelan issued the proceedings dated 26.3.2003. This order was passed for reinstatement. The other letter dated 2.5.2003 addressed to the D.E.O to grant permission for the payment of pay and allowances to the Head Master. The other letter dated 30.4.2003, issued by the Correspondent informing the Head Master that charges framed against the Head Master are dropped. The correspondent also sent the leave particulars of the Head Master to the D.E.O. He also addressed a letter to the Commissioner and Director of School Education for issuance of necessary orders for payment of salary. Therefore, the Correspondent was addressed several letters to the competent authorities over a considerable length of period. Except the proceedings dated 30.4.2003, there was no mention about the other proceedings with regard to the forgery. If really, the 3rd respondent forges the signature of R.4 certainly the management would not have kept quite. So far, no action as contemplated under law is initiated against the 3rd respondent Head Master. The correspondence would clearly go to show that the correspondent had issued those proceedings basing on the resolution passed by the General Body and Managing Committee. The contention of the management that R.4 has no authority to issue such proceedings cannot be accepted in view of the fact that he being the correspondent has to necessarily carry out the instructions of the Managing Committee through Correspondent only. Therefore, the plea taken by the petitioner's

school as well as the correspondent is totally un-acceptable and wholly untenable.

The other contention raised by the learned counsel for the petitioner in both the writ petitions is that the D.E.O, by his proceedings dated 8.8.2001, directed the correspondent to withdraw the proceedings of the correspondent dated 2.8.2001 terminating the service of N. Rasool Sahib and reinstate him into duty with retrospective date of pending finalization of departmental proceedings. Therefore, the first contention is that when the departmental proceedings are pending before the D.E.O, the Government is quite competent to pass any orders. The said contention cannot be acceptable because the General Body of the Muslim Educational Association has held its meeting on 23.4.2003 and resolved to drop all the charges framed against N. Rasool Sahib and empowered the correspondent D.B.Zeelan to drop the charges. The correspondent by his proceedings dated 30.4.2003 dropped all the charges against N. Rasool Sahib. Since the irregularities committed by the Head Master, it is for the management to take appropriate disciplinary action against the teaching or non-teaching employee under the control of the management. When the management thus took a decision to drop all further departmental proceedings against N.Rasool Sahib, the pendency of the appeal before the D.E.O., does not arise. Since the Government has to pay the salary inasmuch as the post being held by N. Rasool Sahib is an aided post and therefore, the Government is competent to treat that period as on duty. The Government has not taken any administrative decision in the departmental proceedings. The decision was taken by the General Body of the Muslim Educational Association, since the management has dropped all the further proceedings, the period of suspension and the period of termination of service of the 3rd respondent has to be regulated. No doubt, as rightly contended by the learned counsel for the petitioner that Fundamental Rule 45.A(1) has no application, but at the same time, the Government has got power to regularize suspension period and removal period and the same has to be regulated since pay and allowances of the petitioner has to be regularized, in view of the fact that the finance has to be released by the Government alone. Therefore, the impugned Government Order does not suffer from any incurable infirmity so as to call for any interference by this Court.

Hence, both the Writ Petitions are devoid of merits and are accordingly dismissed. In

the circumstances of the case, no order as to costs.

JUSTICE K.C. BHANU.

_____ July 2005.

BCS.